

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INSOLVENCY PETITION NO.62 OF 2006

Varsha D. Punjabi	Pet.Creditor
versus	
Sunita Prem Kapoor	Debtor

Ms.Kavita S. Lalwani for petitioning creditor.

Mr.Jayant Gaikwad for debtor.

CORAM : A.M.KHANWILKAR, J.

DATE : 04th December 2007

PC :

1. Heard counsel for the parties. The first argument on behalf of the debtor is that the husband is already declared insolvent. That, in my view, is of no avail to the debtor. For, it is not in dispute that there is subsisting decree against the debtor Sunita Prem Kapoor which has not been challenged before any Court of competent jurisdiction so far. In that sense, even the present debtor is liable to be proceeded in accordance with law.

2. The next submission on behalf of the debtor

is that she is willing to settle the claim of the petitioning creditor arising out of the decree dated 15th July 2002. According to the petitioning creditor, the decree is for principal sum of Rs.1.50 lakh along with interest accrued thereon till realisation. That amount, according to the petitioner, comes to Rs.3,97,600/- as of now. The counsel for the debtor, however, disputes the correctness of that figure. The counsel, however, has not been able to demonstrate as to why computation done by the counsel for the petitioning creditor of the decretal amount payable by the debtor as of today is incorrect. If the debtor is inclined to settle the claim of the petitioning creditor, shall be liable to pay lumpsum amount indicated in this order quantified as Rs.4.00 lakh (Rs.Four lakh only) within six months from today, failing which the petitioning creditor would be entitled to proceed against the debtor in accordance with law.

3. This offer, however, is not acceptable to the debtor. Inasmuch, the debtor is willing to pay only a sum of Rs.2.00 lakh to the petitioning creditor towards full and final settlement of the entire claim. Significantly, the husband of the

present debtor who has been adjudged as an insolvent in proceedings against him, made a statement before this Court on 18th April 2006 that he will make payment of Rs.3.25 lakh in seven equal monthly instalments commencing from 1st May 2006. He has not honoured that commitment so far. The husband of the debtor is present in the Court and is instructing the advocate for the debtor in this matter. The grievance of the petitioning creditor is that this gentleman refused to appear before the Official Assignee on the notified dates but is seen outside the office invariably on those dates. It is not necessary for me to enter into this controversy. Suffice it to observe that the debtor has failed and neglected to pay the decretal amount so far. No explanation is offered for non payment of the decretal amount so far. The petition ought to succeed in terms of prayer clauses (a) and (c). This is so because the petition is founded on decree passed by this Court against the debtor on 15th July 2002 in Summary Suit No.1079 of 2000. The debtor has failed to pay the amount in spite of insolvency notice served on her bearing No.N/36-04. The debtor thereafter took out Notice of Motion No.125 of 2005 in which conditional order was

passed on 18th April 2006. But the debtor has failed to pay even a single instalment in terms of the said conditional order. As a consequence, the petitioning creditor has filed this petition on 11th July 2006 which was duly served on the debtor on 23rd May 2007. In spite of service, no satisfactory explanation has been offered by the debtor for the non payment of any amount to the petitioning creditor so far and more particularly in spite of assurance given to this Court, as recorded in order dated 18th April 2006. Accordingly, this petition is made absolute in terms of prayer clauses (a) and (c).

(A.M.KHANWILKAR, J.)